

Report out from Working Group (Defense/Advocacy/Academia)  
To the Subcommittee on Misdemeanors  
August 8, 2024

### **Proposed Focus**

Misdemeanor crimes and punishments that have significant impact, especially on working class people who may be stymied in their employment and family obligations due to arrests, short-term incarceration, unmanageable conditions of probation, outsized financial penalties, and bars to employment and professional licenses.

While we should identify outdated and unused misdemeanors for recommended removal, our working group would like the subcommittee to start elsewhere, focusing on impactful misdemeanors—a project that will require a longer time horizon but will ultimately serve the residents of Nevada.

Here is the framework we discussed. Please note that the examples provided are not decisions already made, but illustrations of the type of decisions that could be made using this framework.

#### **Step 1. Update categories (currently gross misdemeanors, misdemeanors, and civil infractions)**

##### **Classification Proposal from the working group**

(1) gross misdemeanor (364 days ; reconsider fine max)<sup>1</sup>

(2) misdemeanor: (180 days max; reconsider the fine)<sup>2</sup>

Note that the subcommittee could consider reducing the maximum to 120 days,<sup>3</sup> which is the equivalent of a mid-level misdemeanor offense in Arizona, or 90 days, which is the maximum sentence for a misdemeanor in Washington state.<sup>4</sup>

(4) petty offense (10 days max; decide on fine/fee max)<sup>5</sup>

(5) civil infraction (civil - make suggestions for supporting the court system).<sup>6</sup> Note for consideration, the Civil Compromise Statutes. NRS 178.564-566.

(6) recommended for removal (the “trash can”) - as recommended by working groups.

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<sup>1</sup> The majority of states—but certainly not all—have a misdemeanor category with a sentence up to one year. In NRS 193.149, this is categorized as a gross misdemeanor, removing it from Justice Court so that Justice Court presides over only bench trials, with the exception of domestic violence cases identified in *Andersen v. Eighth Judicial Court*, 135 Nev. Adv. Op. 42 (2019).

<sup>2</sup> Same as Nevada’s current misdemeanor penalty in terms of maximum jail time.

<sup>3</sup> Ariz. Rev. Stat. § 13-707 (A).

<sup>4</sup> In Washington state, a misdemeanor carries no more than 90 days jail time. RCW § 9A.20.010

<sup>5</sup> This category for “petty offenses” is most similar to Colorado’s 2021 revision creating two categories of misdemeanors (one year and six month maximums, like Nevada) and then adding “petty offense” punishable by up to 10 days in jail and \$300 fine. Colo. Rev. Stat. § 18-1.3-501.

<sup>6</sup> The maximum penalty for a civil infraction in Colorado is a \$100 fine. Colo. Rev. Stat. § 16-2.3-101.

## Discussion

Here is a sampling of state misdemeanor regimes that include lower levels of misdemeanors or civil infractions:

- Arizona has three categories of misdemeanors: Class 1 carries up to 6 months jail time; Class 2 carries up to 4 months jail time; and Class 3 carries up to 30 days jail time. Az. Rev. Stat. § 13-707.
- Colorado recently completed an overhaul of its misdemeanor statutes. While it reduced the number of categories, it still has a level for petty offenses, with a maximum of 10 days in jail, and another for civil infractions, with no jail time. Colo. Rev. Stat. § 18-1.3-501.
- North Dakota, where a Class B misdemeanor carries up to 30 days jail time. North Dakota also categorizes some former misdemeanors as civil infractions for which there is no jail time *unless* the person has two priors for the same offense. NDCC § 12.1-32-01.

Please note that the above are examples. The subcommittee should decide whether a 50-state survey of classifications and recent reforms would be helpful.

Based on this working group's research, the classification system that we propose above is most similar to the Colorado system. *Alternatively*, we could propose an additional classification level: a lower level misdemeanor, carrying a 90-day maximum.

### **Step 2. Identify policy and legal issues relevant to selecting the appropriate category for each crime**

Example: Comparing the severity of offenses, and asking, are there some misdemeanors that seem categorically less severe, thus meriting a lower classification or lower maximum penalty?

Example: Identifying misdemeanors with wildly different consequences depending on the court, judge, county, or municipality. Should the legislature classify the crime more precisely to reduce the variability in outcome?

Example: Identifying crimes that do not in practice serve their public safety function. This requires thinking carefully about the definition of public safety and the types of harms of misdemeanor arrests and convictions (e.g., impact of arrest, jail, and conviction on employment and family life).

### **Step 3. Review all existing misdemeanors to recommend the appropriate category. Note: this may require bringing in stakeholders and other interested parties depending on the type of offense under consideration, which was the original intention for the working groups.**

Example: First-offense trespass may better fit in the "petty offense" category, rather than carry the same maximum punishment as simple assault.

Example: Some additional traffic offenses should be reclassified as infractions.

Example: Some crimes of public officials may be reclassified from misdemeanor to gross misdemeanor to reflect the gravity of the misuse of public office.

### **Overarching issues:**

While the above 3-Step process is thorough but long, we have some shorter term “asks” for this legislative session:

**Need for data** to determine which misdemeanor offenses have the biggest impact, the degree of variation in punishment (including fines), etc. These data are also necessary to develop a complete picture of the disparate impact of arrests, prosecutions, and punishment (including fines and fees).

Example regarding variation and fairness: Collect Data on Misdemeanor Sentences for Counties which have a Department of Alternative Sentencing vs. those that do not and the sentencing disparities being created.

*Please note that our working group is drafting a list of data points for the Sub Committee's consideration.*

**Evidence-based conditions of release and probation.** To what extent are conditions of release or probation ordered without an evidence-based assessment of need? Example: driving under the influence does not always point to substance use disorder; assault sometimes *does* point to substance use disorder.

**Length of probation** for misdemeanors may be too long to serve its purpose, taxing the resources of the court and public defender without any rehabilitative benefits (and counterproductive expenses, missed work, etc.). Should we have a one-year limit, as California instituted?

**Fines and fees** exact a higher punishment on lower income people. Potential solutions include reducing fees, lower maximum fines, *and* the requirement of an ability-to-pay determination in the first instance.

The administrative assessment fees in NRS 176.059 should be reconsidered for each level of offense. Note also that there is no administrative assessment fee for civil infractions. NRS 176.059 (2)(b).